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Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 01M-36
00604

2001 AUG 13 P 3: 13

In the Matter of	)	
	)	
C. F. Communications Corp., et al.,	)	EB Docket No. 01-99
	)	
Complainants,	)	
	)	File Nos. E-93-34, E-93-35, E-93-36,
v.	)	E-93-37, E-93-38, E-93-40, E-93-41,
	)	E-93-42, E-93-43, E-93-44, E-93-45,
Century Telephone of Wisconsin, Inc., et al.,	)	E-93-46, E-93-47, E-93-48, E-93-49,
	)	E-93-50, E-93-56, E-93-58, E-93-59,
Defendants.	)	E-93-60, E-93-61, E-93-62, E-93-73,
	)	E-93-74, E-93-081

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MEMORANDUM OPINION AND ORDER

Issued: August 3, 2001 ; Released: August 8, 2001

Under consideration are: (a) a Notice of Deposition, served on July 6, 2001, by Alcazar Ltd., Ascom Holding, Inc., BDA Sales, Inc., Mayflower Communications, Inc., ETS Payphones, Inc., Just-Tel, Inc., New York City Telecommunications Company, Inc., New York Payphone Systems, Inc., and Telebeam Telecommunications Corporation (collectively "Alcazar"); (b) Verizon's Opposition to Notice of Deposition, filed on July 13, 2001, by Verizon; (c) Complainant's Memorandum in Opposition to Defendant Verizon's Motion to Limit the Scope of Complainant's Rule 30(B)(6) Deposition Notice, filed on July 20, 2001, by Alcazar; (d) five Notice(s) of Deposition, served on July 12, 2001, by Alcazar; (e) Verizon's Opposition to Notices of Deposition, filed on July 19, 2001, by Verizon; and (f) Complainant's Memorandum in Opposition to Defendant Verizon's Opposition to Notices of Deposition, filed on July 26, 2001, by Alcazar. These pleadings relate to the complaints associated with File Nos. E-93-34, E-93-35, E-93-36, E-93-37, E-93-38, E-93-40, E-93-41, E-93-42, E-93-46, E-93-47, E-93-48, E-93-50, E-93-56, E-93-59, E-93-60, E-93-61, E-93-62, E-93-74, and E-93-81.

Alcazar seeks to take the depositions of Verizon, three named Verizon employees, and any experts that Verizon intends to call as a witness, or rely on in any way, at the hearing. Alcazar's July 6, 2001, notice of deposition contains an "Attachment A" which includes 11 "Topics of Inquiry." Four of the five July 12, 2001, notices of deposition contain an "Attachment A," which includes either 15 or 24 separate "Topics of Inquiry." For various reasons, Verizon objects to a number of these topics. Verizon also states that, since it has not retained any experts, it has none to produce at the depositions. Alcazar opposes Verizon's objections. For the reasons which follow, Verizon's oppositions will be granted in part and denied in part.

July 6, 2001, Notice of Deposition

Verizon objects to the adduction of any testimony relating to periods of time beyond the two-year statute of limitations period. This objection will be sustained in part. The *Hearing Designation Order* in this proceeding, DA 01-1044, released April 24, 2001 ("*HDO*"), at paragraph 18, stated that complainants and defendants may present arguments at the hearing

concerning "the issue of whether each formal complaint for damages would qualify under the relating back rules." Given this statement, information pertaining to some of the time period in question may ultimately prove to be relevant to the damages issue. Consequently, inquiry into that period "appears reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. Thus, the time period to be considered in connection with the complaints against Verizon shall begin two years prior to the filing of each relevant informal complaint. *Id.* at ¶ 17; *Liability Order*, 15 FCC Rcd 8759 (2000), at ¶¶ 36-37. Inquiry before these dates is barred by the statute of limitations.

Verizon objects to the adduction of testimony concerning its own payphone business and the number of public and semi-public payphones it provided. Verizon's objection will be overruled. The *HDO*, at paragraph 21, "encourage[d]" the parties to consider the use of "proxies" in determining the number of public and semi-public payphones the complainants owned. The *Liability Order*, at paragraph 34, stated that the ratio of the defendant's public to semi-public payphones "may be an appropriate starting point for the damages inquiry." Therefore, information concerning Verizon's payphones "appears reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules.

Verizon objects to the adduction of testimony about the "attributes that Verizon considers relevant" in determining whether a payphone is a "public payphone" for the purposes of the assessment of EUCL charges. This objection will be sustained. This area of inquiry calls for opinions and legal conclusions, and such matters are not appropriate subjects of discovery. In addition, for the purposes of this proceeding, the relevant definitions of "public" and "semi-public" are the ones contained in the Commission's orders.

<u>July 12, 2001, Notices of Deposition</u>

Verizon again objects to the time periods covered in the Topics of Inquiry. Verizon's objection is sustained in part. For the reasons stated above, the time period shall commence two years prior to the filing of each relevant informal complaint. Further, no inquiry will be permitted into the period after the conduct in question ceased. Information relating to the post-conduct period does not "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. Alcazar contends that, for the purpose of determining the ratio of Verizon's public to semi-public payphones, the post-April 1997 period should be considered. This argument is rejected. The relevant period of time for this computation is the period within which the conduct in question took place. Periods before and after that period, including the current period, are irrelevant.

Verizon again objects to the adduction of testimony concerning its own payphone business and the number of public and semi-public payphones it provided. For the reasons stated above, Verizon's objection will be overruled. The information concerning Verizon's payphones "appears reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. *HDO* at ¶ 21; *Liability Order* at ¶ 34.

Verizon objects to the requirement that it produce witnesses to testify about "each and every [Verizon] payphone" in several states over a lengthy period of time that satisfy certain criteria. Verizon's objection is overruled. The information sought from these individuals "appears reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. *HDO* at ¶ 21; *Liability Order* at ¶ 34.

Verizon objects to Topics of Inquiry requesting information concerning its practices relating to credit ratings and deposits. Verizon's objection will be sustained. These subjects do not "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules.[1]

Verizon objects to a Topic of Inquiry that seeks information with respect to certain stipulations agreed to by the parties. Verizon's objection is sustained for the reasons stated in Verizon's July 19, 2001, Opposition.

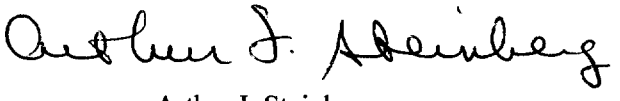
Verizon again objects to the adduction of testimony about the "attributes that Verizon considers relevant" in determining whether a payphone is a "public payphone" for the purposes of the assessment of EUCL charges. This objection will be sustained for the reasons stated above.

One final matter must be addressed, namely, the depositions of expert witnesses. Since Verizon has not retained any experts, it has none to produce. However, should Verizon decide in the future to present expert testimony at the hearing, Alcazar is entitled, and will be permitted, to depose those individuals within a reasonable time after they have been identified.

Accordingly, IT IS ORDERED that Verizon's Opposition to Notice of Deposition, filed by Verizon on July 13, 2001, and Verizon's Opposition to Notices of Deposition, filed by Verizon on July 19, 2001, ARE GRANTED to the extent discussed above, and ARE DENIED in all other respects.

IT IS FURTHER ORDERED that the depositions under consideration SHALL TAKE PLACE on dates and at times that are mutually agreeable to the parties.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge

[1] This ruling is not inconsistent with a ruling previously made in *Memorandum Opinion and Order*, FCC 01M-25, released, July 25, 2001. The information sought there was different from the information sought from Verizon here and had nothing to do with credit ratings or deposits.